MINUTES OF THE

GREENSBORO BOARD OF ADJUSTMENT

REGULAR MEETING

FEBRUARY 23, 2004

The regular meeting of the Greensboro Board of Adjustment was held on Monday, February 23, 2004 in the City Council Chamber of the Melvin Municipal Office Building, City of Greensboro, North Carolina, commencing at 2:00 p.m. The following members were present: Chairman Donald Sparrow, John Cross, Peter Kauber, Hugh Holston, Joyce Lewis, Jim Kee, Marshall Tuck. Bill Ruska, Zoning Administrator, and Blair Carr, Esq., from the City Attorney's Office, were also present.

Chairman Sparrow called the meeting to order, and explained the policies and procedures of the Board of Adjustment. He further explained the manner in which the Board conducts its hearings and the method for appealing any ruling made by the Board. Chairman Sparrow also advised that each side, regardless of the number of speakers, would be allowed a total of 20 minutes to present evidence.

Mr. Kauber said he wished to notify the Chairman that he had visited all the sites under consideration at this meeting. Ms. Lewis stated that she had visited several sites and would so indicate when the time came.

APPROVAL OF MINUTES OF LAST MEETING

Ms. Lewis moved approval of the minutes of the December 22, 2003 minutes as written, seconded by Mr. Cross. The Board voted 6-0 in favor of the motion. (Ayes: Sparrow, Kauber, Cross, Lewis, Tuck, Kee. Nays: None.)

Mr. Ruska was sworn in for evidence to be given by him on the requests before the Board today.

OLD BUSINESS

VARIANCE

(A) BOA-03-61: 803-809 HOBBS ROAD – PIERCE HOMES OF CAROLINA, INC. REQUESTS A VARIANCE FROM THE MAXIMUM FENCE/WALL HEIGHT REQUIREMENT. VIOLATION: A PROPOSED FENCE/WALL WILL EXCEED THE MAXIMUM HEIGHT OF 4 FEET BY 2 FEET WITHIN 15 FEET OF A STREET RIGHT-OF-WAY. SECTION 30-4-9.6(A), PRESENT ZONING CU – RS-7, BS-48, CROSS STREET – HOBBS LANDING COURT. (CONTINUED)

Mr. Ruska stated that Pierce Homes of Carolina, Inc. is the owner of Hobbs Landing Subdivision. This property contains 16 lots. The subdivision has received preliminary approval by the Technical Review Committee. This case was continued from the December 22, 2003, meeting. The property is located on the western side of Hobbs Road north of Friendly Avenue on zoning map block sheet 48. The property is zoned CD-RS-7 and the lots will be developed with single family homes. The applicant wishes to construct a brick fence/wall along the front entrance of the subdivision and two lots adjacent to Hobbs Road. The fence/wall is proposed to be 6 feet high within 15 feet of the right-of-way instead of the required maximum 4 feet. The Greensboro Department of Transportation has approved the location as acceptable. The fence/wall will be constructed along the frontage on lot numbers one and sixteen. No portion of the fence/wall will encroach into the right-of-way. Lot #1 has 124.60 feet of frontage and lot #16 has 117.61 feet of frontage. Hobbs Landing Court is the dedicated road that runs between the two lots and is the only access to the lots. The zoning office met with Chris Spencer, GDOT Transportation Engineer for review of the proposed fence/wall. Mr. Spencer approved the fence/wall in its proposed location. The proposed fence/wall does not create any type of sight distance problem along Hobbs Road or Hobbs Landing Court. In reference to Section 30-4-9.6(A) *Residential Uses:* "Except as provided in this subsection, no fence shall exceed four (4) feet in height within fifteen (15) feet of any public or private street right-of-way. On lots where the rear or side yard adjoins a major thoroughfare or a minor thoroughfare and there is no driveway access and no sight distance interference, no fence shall exceed six (6) feet in height within fifteen (15) feet of the thoroughfare right-of-way. Otherwise, no fence shall exceed seven (7) feet in height." The property lines for lots #1 and #16 adjacent to Hobbs Road are considered side property lines; however, Hobbs Road is classified as a collector road and not a thoroughfare. The applicant has submitted drawings that detail the fence/wall construction material. The barrier will be constructed of brick with decorative wrought iron. The brick will help to serve as a noise and screening buffer. The adjacent properties to the west and south are zoned RS-12, the adjacent property to the north is zoned RS-7, and the property located directly across on the eastern side of Hobbs Road is zoned RS-12 and GO-H.

Mr. Holston arrived for the remainder of the meeting.

Charlie Melvin, Esq., 300 N. Greene Street, representing the applicant, stated that they would submit handouts with information that is consistent with what Mr. Ruska had just told the Board. The preliminary plan has been approved and the site work for this development is under way. The property is located directly across Hobbs Road from the former Burlington Industries Corporate offices and backs up to the Lutheran Church that is entranced from Friendly Avenue. The variance would go along the front of the property which would have a decorative fence and it would serve a very valuable function. A rendering of the proposed appearance of the desired wall and a landscaping plan was also shown. Hobbs Road is designated as a collector street so the strict enforcement of the ordinance would only permit a 4 foot fence. It is felt that no

reasonable use can be made of the property, especially the two corner lots, without the privacy/sound barrier that will be offered by the 6 foot fence versus the 4 foot fence/wall. There are no public safety or welfare considerations as Hobbs Road has less traffic than Cornwallis Drive as indicated in the report from GDOT. The hardship comes about because of the location and nature of the property and the way the ordinance is couched to permit different heights of fences under different classifications of the roadways in the city. It is felt that the variance would be in harmony with the neighborhood as there is an existing development with a fence along the front of that property.

Chairman Sparrow asked if there was anyone present who wished to speak in opposition to the request and no one came forward.

After some discussion, Ms. Lewis moved that in regard to BOA-03-61, 803 – 809 Hobbs Road, that the Zoning Administrator's facts be incorporated into the record and based on the stated findings of fact, she moved that the Zoning Enforcement Officer be overruled and the variance granted, based on the following: The practical difficulties result from carrying out the strict letter of this ordinance is that you are looking at a street that is very busy that runs beside of it and the fact that these lots happen to border on that street and in order to be able to complete this subdivision they would need to use those two lots also which does cause a hardship to that particular piece of property. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit because it makes a reasonable use of the land. The granting of the variance assures the public safety and welfare and does substantial justice because, as stated by the representative of GDOT, the proposed wall at 6 feet does not create any type of sight distance problem along Hobbs Road or Hobbs Landing Court. The motion was seconded by Mr. Kee. The Board voted 5-2 in favor of the motion. (Ayes: Sparrow, Cross, Lewis, Kee, Tuck. Nays: Holston and Kauber.)

NEW BUSINESS

VARIANCE

(A) BOA-04-01: 2 ELM RIDGE LANE JOHN H STRATTON, III REQUESTS VARIANCES FRO THE MINIMUM REAR SETBACK REQUIREMENT AND FROM A MAJOR THOROUGHFARE SETBACK REQUIREMENT. THIS CASE IS PENDING PLANNING BOARD APPROVAL FOR RELEASE OF ALL APPLICABLE EASEMENTS. VIOLATION #1: A PROPOSED FAMILY ROOM/STORAGE ROOM ADDITION WILL ENCROACH 15 FEET INTO A REQUIRED 30-FOOT REAR SETBACK. TABLE 30-4-6-1. VIOLATION #2: THE SAME ADDITION WILL ALSO ENCROACH 17.5 FEE INTO A 50-FOOT MAJOR THOROUGHFARE SETBACK (NORTH ELM STREET). PRESENT

ZONING – RS-15, BS-53, CROSS STREET – NORTH ELM STREET. (GRANTED)

Mr. Ruska stated that John H. Stratton, III is the owner of the property located at 2 Elm Ridge Lane. The lot is located at the southeastern intersection of North Elm Street and Elm Ridge Lane north of East Cone Boulevard on zoning map block sheet 53. The lot is a corner lot. The lot is zoned RS-15 and contains 22, 256 square feet. The applicant is proposing to construct a family room and storage room addition to an existing single-family dwelling. The addition will encroach 15 feet into a 30-foot required rear setback and 17.5 feet into a 50 foot major thoroughfare setback from North Elm Street. The dwelling was constructed in 1997. That permit was issued based on a drawing that shows the house 51.5 feet from North Elm Street. Based on that number along with the applicants addition, which has been requested at a total width of 27 feet, minus the 7 foot offset, the addition will be 34 feet from North Elm Street. There is a 20-foot utility easement located on the rear of the lot. The applicant's addition would be encroaching 15 feet into a rear setback and 5 feet into a recorded easement area. The applicant applied for a 5-foot (five) easement release. At the time of this fact sheet, Duke Power Company had not yet released the five-foot portion that was requested. Also, when and if Duke Power Company releases the five foot portion, the official easement release must be heard and granted by the Planning Board. The case cannot be scheduled for the Planning Board until all easements are released. This property is lot #1 in a subdivision plat that contains 31 lots that was recorded in 1987. At that time, this portion of North Elm Street was not classified a major thoroughfare. The major thoroughfare classification became effective on July 1, 1992. This lot also contains a 20 foot wall easement adjacent to North Elm Street. The lot has an average depth of 162 feet. The plat restricted the house to be a minimum of 50 feet from Elm Ridge Lane; thus, the house was setback further than the minimum front zoning setback requirement, which is 30 feet. Buffalo Lake is located directly behind the applicant's lot. The adjacent properties are also zoned RS-15, the properties located on the western side of North Elm Street are zoned RS-15 and RS-12(CL).

Chairman Sparrow asked if there was anyone present who wished to speak in favor of this request.

Marc Isaacson, attorney representing the applicant, was sworn in and stated that the property is Lot 1, which is immediately south of the highlighted traffic island shown on the plat presented to the Board. The purpose of highlighting this is that the location of the traffic island at the entrance to this subdivision caused the contractor to install a circular driveway and the reason for that is because it made ingress and egress more practical in and out of this residence. When the circular drive was installed it essentially backed up the location of the house on the property. The property has a 50 foot minimum building line at the front of the property and there is a 20 foot utility easement at the back of the property and there is a 20 foot wall easement on the western side of the property. The house was moved further back because of the circular drive due to

the location of the traffic island and then it is further affected by the location of these other easements on the property. The proposed addition is primarily for a living room and storage room and it will be located on the North Elm Street side of the property. This home is smaller than the other homes in the neighborhood and in addition to providing additional living space the owners are not happy with the noise and nuisances from the traffic on North Elm Street, which is classified as a major thoroughfare now and it was not when it was platted. With the opening up of the Lake Jeanette neighborhood and offices in that area, there has been a noticeable increase in traffic on North Elm Street. In addition to providing additional living and storage space for the property it would also act as somewhat of a buffer because the topography of this property goes down lower at this point. There is a 6 foot high wall that is owned by the Property Owner's Association, however, it is not a suitable sound barrier for the current traffic conditions. He presented some photographs for the Board members' review.

John Stratton, the applicant, was sworn in and stated in response to questions by the Board, that the wall goes from the property line all the way down beyond Provincetown all the way to the next street. The wall is probably 1,000 feet in length and consistent with three neighborhoods that run all the way down North Elm Street. The family room addition would block the existing patio, which is on the rear of the house and blocks the kitchen and dining room area from North Elm Street and he would use additional construction methods to insulate that wall better than he currently has. He has lived there since 1998 and the traffic has increased substantially in this area.

Chairman Sparrow asked if there was anyone present who wished to speak in opposition to this request and no one came forward.

Ms. Lewis stated that in regard to BOA-04-01, 2 Elm Ridge Lane, that the Zoning Administrator's facts be incorporated into the record and based on the stated findings of fact, she moved that the Zoning Enforcement Officer be overruled and the variance granted, based on the following: The practical difficulties of the location of the lot as a corner lot and opening onto a portion of a street that is one-way in front of that particular house means that the owner has to have particular use of that property. They cannot use it as others who front onto this particular street. The hardship of which the applicant complains results, again, from the same unique circumstances and the matter that the traffic has increased quite a lot from the time the house was built. The hardship is not the result of the applicant's own actions because the house is there, the road is there, and the one-way section of the road is directly in front of the house. The practical use of the property is her interpretation of reasonable in this particular situation. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit because the house will fit into the neighborhood and will assure the family of more noise control and will screen the back deck and kitchen area from the traffic along Elm Street. The granting of the variance assures the public safety and welfare and does substantial justice because the property backs up to a lake so there can never be any other use in terms of the back easement and increasing the house

size toward Elm Street will not cause any problem for the public in any way. The motion was seconded by Mr. Holston. The Board voted 4-3 in favor of the motion. (Ayes: Sparrow, Kee, Lewis, and Holston. Nays: Kauber, Tuck, Cross.)

(B) BOA-04-02: 1603 SPRY STREET - RANKIN SCHOOL PLACE PARTNERSHIP REQUESTS A VARIANCE FROM THE MINIMUM OFF-STREET PARKING REQUIREMENT. *VIOLATION:* PROPOSED CONSTRUCTION OF 56 MULTIFAMILY DWELLING UNITS WILL REQUIRE 88 PARKING SPACES. THE APPLICANT IS PROPOSING TO PROVIDE 65 OFF-STREET SPACES, THUS A VARIANCE FOR 23 SPACES IS REQUESTED. TABLE 30-5-3-1, PRESENT ZONING-RM-12 BS-88, CROSS STREET- SUMMIT AVENUE. (GRANTED)

Mr. Ruska stated that Rankin School Place Limited Partnership is the owner of the property located at 1603 Spry Street. The lot is located east of Summit Avenue on the north side of Spry Street on zoning map block sheet 88 and is zoned RM-12. The lot is classified as a through lot, because it abuts two streets that do not intersect at the corner of the lot. The two street frontages are Spry Street and Dane Street. The lot consists of approximately five acres. The lot is rectangular in shape with a width of approximately 312 feet and a depth of approximately 600 feet. The southeastern portion of the lot has a property line that extends south, thus creating an additional 40 feet of width for approximately 150 feet. The applicant is proposing a multi-family development with an accessory use community building. In his application, the applicant has stated the development will require 88 parking spaces. The applicant is proposing to provide 65 off-street parking spaces. However, City Council approved new parking standards on February 17, 2004 and the required number of spaces is now 74 and, with 65 spaces provided, the variance request is now for nine spaces. The site plan has been submitted for review. The zoning comments are included in the BOA packet. The Board of Adjustment case was filed on December 22, 2003 and the site plan was submitted on December 29, 2003. Two of the buildings located adjacent to Dane street do no comply with current minimum centerline street setback requirements; however, the applicant still has opportunity to redesign the site, or possibly be granted a setback modification from the Technical Review Committee. All of the adjacent properties are also zoned RM-12.

Chairman Sparrow stated that he would recuse himself from this item as his law partner would be presenting this case for review.

Vice Chairman Lewis asked if there was anyone present who wished to speak in favor of this item.

Gary Wolf, attorney representing the applicant, 812 N. Elm Street, was sworn in and stated that he wished to submit an exhibit for the Board members' review. He stated that he represents Rankin School Place Limited Partnership, which is the owner of this property, Beacon Management Corporation is the General Partner of that Limited Partnership. The property is zoned RM-12 and the use on this property will be limited to a subsidized elderly housing project. It is not assisted living and is a normal apartment complex but limited to elderly residents. There will be one to two persons managing the property onsite during the week. The project contains 56 units, 48 one-bedroom units and 8 2-bedroom units with a density of approximately 11 units per acre. History on these type of projects indicates that most of these apartments will usually have no more than 1 car per unit and the history has shown about .7 to .8 vehicles per the total number of units. There will be many residents that do not own a vehicle at all and who use public transportation. The purpose of this ordinance is to ensure that all parking is contained on-site, to get the cars off the roads to make it safer for the residents. The ordinance does not contain an exception for elderly housing projects. Providing the required parking on this property is unnecessary and will limit the ability of the developer to provide open space and will impair the safety of the residents on the property. There is ample precedence before this Board for projects in which this same variance has been granted. He mentioned all the ones that were developed by Beacon Management Corporation as one of the developers and examples are Garden Gate on High Point Road, Arbor's Gate I and II on Merrit Drive, Dolan Manor I and II on Golden Gate Drive, St. Leo's on Bessemer Avenue and Cypress Street and the most recent one was in the fall of 2000, Seager Place Limited Partnership. All of these projects had variances consistent with this request, and with the new ordinance change that Mr. Ruska referred to, those variances were in excess of what is now being requested from 74 down to 65. The benefits of the variance are numerous and allows the parking to be centered on the property between the buildings. This is much safer for the residents and keeps all the car traffic to the center of the property instead of having vehicles pull down between buildings, much like you would see at a typical apartment project. It allows the buildings to be located away from the property lines at angles which provides both the residents and adjacent property owners with more privacy and allows more open space between the buildings for the residents to enjoy and also allows for more opportunities for landscaping. It is felt that the precedence of the previous projects and the way this enhances the safety to the residents it warrants the granting of this variance. He stated that Mr. George Carr of Beacon Management Corporation and John Steck are available for any questions by the Board members.

In response to questions, George Carr, Beacon Management Corporation, was sworn in and stated that parking spaces are not reserved for the residents. It is a "first-come-first-served" situation and they are never over-taxed. Some of the residents do not have a car and the most cars they have for one single household, and this is after 35 years of counting, it is less than one-to-one. Some residents have no cars and no household has more than one car. They believe they are very generously providing parking in the total of 65 spaces, serving 56 apartments.

In response to a question concerning the lighting on the property, Mr. Carr stated that there is pole lighting and they are using the historic-type lighting that is currently used in the Aycock Historic District.

In response to questions by Mr. Cross concerning the parking situation, Mr. Ruska stated that the ordinance does require minimum off-street parking for each particular land use within the City. In past cases we have had variances granted that have conditioned the use to a particular use of the property that was seeking a variance and if the use changed then the ordinance would have to be complied with.

John Steck, architect for the applicant, was sworn in and stated that he has worked on these communities for about 10 years and he has never seen any of the parking lots more than half-full and he thinks it would be a tremendous waste of asphalt to do it.

Vice Chairman Lewis asked if there was anyone present who wished to speak in opposition to the request and no one came forward.

Mr. Tuck stated that in regard to BOA-04-02, 1603 Spry Street, that the Zoning Administrator's facts be incorporated into the record and based on the stated findings of fact, with the modification that City Council has recently amended the ordinance and reduces the number of required parking from 88 to 74, therefore, the request for the variance is no longer 23, it is actually 9 off-street spaces. He moved that the Zoning Enforcement Officer be overruled and the variance granted, based on the following: The hardship is not a result of the applicant's own actions because based on the site plan submitted he could, without reducing units, fit the additional 9 spaces that are required, but that based on the historical data over more than 10 years of developing these communities, there is less than one-to-one parking ratio and it is more than adequate for these type of senior communities. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit and assures the public safety and welfare. The motion was seconded by Mr. Kauber.

Mr. Cross asked that there be a friendly amendment that there be a condition that the property be used for elderly housing project consistent with the current deed restrictions. Mr. Tuck and Mr. Kauber agreed to the friendly amendment.

The Board voted 6-0-1 in favor of the motion. (Ayes: Kauber, Cross, Kee, Lewis, Tuck and Holston. Nays: None. Abstained: Sparrow.)

Chairman Sparrow returned to the Chair for the remaining items on the agenda.

(B) BOA-04-03: 926 EAST BESSEMER AVENUE - WACHOVIA CORPORATION REQUESTS A VARIANCE FROM THE MINIMUM STACKING SPACE WIDTH REQUIREMENT. *VIOLATION:* THE CONSTRUCTION OF SEVEN STACKING

LANES, CONSISTING OF TWENTY EIGHT STACKING SPACES FOR DRIVE THRU BANKING SERVICES ARE PROPOSED TO BE 8.5 FEET WIDE WHEN 12 FEET IS REQUIRED; THEREFORE, A VARIANCE OF 3.5 FEET FOR EACH STACKING SPACE IS REQUESTED. TABLE 30-5-3-2, PRESENT ZONING-GB, BS-3, CROSS STREET-PARK AVENUE. (DENIED)

Mr. Ruska stated that Wachovia Corporation is the owner of the property located at 926 East Bessemer Avenue. The property is located at the southeastern intersection of Park Avenue and East Bessemer Avenue on zoning map block sheet 3. The property is zoned GB. The property contains Wachovia Bank. The applicant is proposing to upfit the site and increase the number of drive through lanes from five to eight. Each lane must provide four (4) stacking spaces. The minimum size requirement for a stacking space is now 9 feet x 20 feet. The applicant is proposing each of the stacking lanes to be 8.5 feet wide; thus, requesting a variance of 0.5 feet width for each stacking space. The zoning office met with Bill Judge PE, Design Review Engineer with the Greensboro Department of Transportation in reference to reducing the width of a stacking space from 12 feet to 8.5 feet. Mr. Judge was of the opinion that 8.5 feet at the point of service is acceptable; however, 9 feet is now the minimum standard. The probability of damage to vehicles and their mirrors caused by sideswiping a vertical obstruction would increase as the width of the stacking spaces is decreased below 9 feet. There is an escape car shown in the area adjacent to Park Avenue that is labeled as “side buffer.” Escape lanes are not required by the current Ordinance. The adjacent properties located to the west, the north side of East Bessemer Avenue, and on the western side of Park Avenue are also zoned GB. The adjacent property located to the south is zoned RM-12.

Nancy Everhart, architect with Little Diversified Architectural Consulting, 5815 West Park Drive, Charlotte, NC, was sworn in and stated that on this particular site the bank is looking at closing 2 branches into this one. The current building would be demolished, moved to a temporary facility, and they would build this structure. Due to their number counting, it is believed that the requested number of drive-up lanes would be required to satisfy their customers. They wish to reduce the spacing from 12 feet to 8 feet 6 inches wide. Historically, that is what is installed for the drive-up facility. After years of looking at it, they have done some at 9 feet and some at 12 feet, but what happens at 12 feet is the cars tend to line up in the center of the lane and they cannot reach the unit and either have to get out of their car or back up and get closer, so they are trying to avoid that. It has been their recommendation in what they have seen over the years that 8 feet 6 inches seems to be the most convenient.

Ms. Lewis stated that this is one of the sites she had visited.

Mr. Tuck pointed out that these types of variances have been granted in the past and they would not do anything that is not safe for their customers and he feels that some public good was found in granting the variance at the First Citizens on New Garden Road by going down from 12 feet to 8 feet 6 inches or 9 feet. The problem he is having now is that City Council has reduced from 12 feet to 9 feet and Mr. Judge with GDOT is saying 8 feet 6 inches is alright and if it was 8 feet 6 inches before, then why didn't the Board make it 8 feet 6 inches as a standard.

Ms. Carr stated that she attended that meeting and it was her recollection that the Board placed emphasis on the pending change to the ordinance that was recited by Mr. Ruska at that time and it has come to fruition at this time. She believes that Mr. Judge, the Traffic Engineer, was also present and acknowledged that he believed the 9 feet was sufficient.

Mr. Ruska stated that he remembered on a couple of past cases that he mentioned to the Board that the committee that was looking at the entire parking section was considering the 9 foot width of a stacking space.

Mr. Kauber stated that he felt that a study had been done and the ordinance was amended to change the spacing to 9 feet and he does not feel that a variance is warranted in this case. The law has been amended according to the way the experts thought it should be amended.

Chairman Sparrow stated that the law has changed in the middle of an application and asked which law applies.

Counsel Carr stated that the current law that is in effect right now is the one that is applicable.

Chairman Sparrow asked if there was anyone present who wished to speak in opposition to the request and no one came forward.

Mr. Kauber stated that in regard to BOA-04-03, 926 E. Bessemer Avenue, that the Zoning Administrator's facts be incorporated into the record and based on the stated findings of fact, he moved that the Zoning Enforcement Officer be upheld and the variance denied, based on the following: A reasonable use can be made of this property, especially given the fact that the recent change in the law has dropped the width to 9 feet. The motion was seconded by Mr. Tuck. The Board voted 7-0 in favor of the motion. (Ayes: Sparrow, Kauber, Cross, Kee, Lewis, Tuck and Holston. Nays: None.)

(D) BOA-04-04: 5815-5821 WEST FRIENDLY AVENUE - WACHOVIA CORPORATION REQUEST VARIANCES FROM THE MINIMUM STACKING SPACE WIDTH REQUIREMENT AND THE MINIMUM LENGTH REQUIREMENT. *VIOLATION #1:* THE CONSTRUCTION OF FIVE STACKING LANES, CONSISTING OF TWENTY STACKING SPACES FOR DRIVE THRU BANKING SERVICES ARE PROPOSED TO BE 8.5 FEET WIDE WHEN 12 FEET IS REQUIRED; THEREFORE, A VARIANCE OF 3.5 FEET FOR EACH STACKING SPACE IS REQUESTED. TABLE 30-5-3-2, PRESENT ZONING-HB, BS-165, CROSS STREET- COLLEGE ROAD. VIOLATION #2, THE CONSTRUCTION OF FIVE STACKING LANES, CONSISTING OF TWENTY STACKING SPACES FOR DRIVE THRU BANKING SERVICES ARE PROPOSED TO BE 18 FEET IN LENGTH WHEN 20 FEET IS REQUIRED; THEREFORE, A VARIANCE OF 2 FEET FOR EACH STACKING SPACE IS REQUESTED. TABLE 30-5-3-2, PRESENT ZONING-HB, BS-165, CROSS STREET-COLLEGE ROAD. (DENIED #1, APPROVED #2)

Mr. Ruska stated that Wachovia Corporation is the owner of the property located at 5815 – 5821 West Friendly Avenue. The property is located on the southern side of West Friendly Avenue between Francis King Street and College Road on zoning map block sheet 165. The property is zoned HB. The corner portion (5821 W. Friendly Ave.) contains a jewelry store. The applicant is proposing to combine the 2 lots and construct a new bank building on this site and construct 6 stacking lanes for drive through services. Five of the six stacking lanes do not meet minimum stacking width requirements. Each lane must provide four (4) stacking spaces. The minimum size requirement for a stacking space is now 9 feet x 20 feet. The applicant is proposing five of the stacking lanes to be 8.5 feet wide and 18 feet long; thus, requesting variances of 0.5 feet width and 2 feet of length for each of these stacking spaces. The zoning office met with Bill Judge PE, Design Review Engineer with the Greensboro Department of Transportation in reference to reducing the width of a stacking space from 12 feet to 8.5 feet and the length from 20 feet to 18 feet. Mr. Judge was of the opinion that 8.5 feet at the point of service is acceptable; however, 9 feet is now the minimum standard. Mr. Judge felt the 2 feet reduction in length is acceptable. The probability of damage to vehicles and their mirrors caused by sideswiping a vertical obstruction would increase as the width of the stacking spaces is decreased below 9 feet. There is a bypass lane shown on the required drawing. The Ordinance does not require bypass lanes. The zoning officer has received and reviewed the site plan for compliance. Zoning has approved the site plan other than the noted violations in regards to the required stacking spaces. The adjacent properties located to the south are also zoned HB, the adjacent properties located on the north side of West Friendly Avenue are zoned PI, the adjacent properties located on the eastern side of College Road are zoned GB and HB, and the adjacent properties located on the western side of Francis King Street are zoned CD-HB.

Nancy Everhart, architect with Little Diversified Architectural Consulting, 5815 West Park Drive, Charlotte, NC, was sworn in and stated that on this particular site the bank is located at the corner of West Friendly Avenue and Guilford College Road and there are a lot of huge building setbacks for the size of the lot. There is currently a Wachovia Bank on this site and Cass Jewelry store is to their right. Wachovia has purchased the Cass Jewelry store site so they can have more land to improve this piece of property. They will tear down both of the existing buildings to build a new building and there is another branch down the street that they will close. The unusually high building setback is what required this request for reducing from 12 feet to 8 feet 6 inches, which is the standard that Wachovia has done for many years. Because of the setback line along Francis King Street and Guilford College Road, there are unusually tight site restrictions and that is why they are asking for a reduction in the length of the stacking from 20 feet to 18 feet. There are numerous site layouts on this one to try and get it to work and this seems to be the best solution for the bank and their customers and the safety of all. They tried to segregate it so the drive-up traffic was to the left and the walk-up traffic was to the right, with some parking for the employees by the drive-up area.

Ms. Lewis stated that she had also visited this site.

Chairman Sparrow asked if there was anyone present who wished to speak in opposition to the request and no one came forward.

Mr. Tuck stated that in this particular case he does not have a problem but he is a little concerned about the length but Ms. Everhart had stated that the cars are shown at the 18 feet length. To be consistent with the last case, he would be more inclined to go with the 18 feet instead of a 9 foot by 20 foot space to give them some of the variance that they can deal with. He thinks the 20 foot space is going to hurt the way this site appears to be laid out.

Mr. Ruska pointed out that where they are proposing the drive-thru lanes, there are none there right now.

Mr. Tuck stated that in regard to BOA-04-04, 5815-5821 West Friendly Avenue, that the Zoning Administrator's facts be incorporated into the record and based on the stated findings of fact, he moved that the Zoning Enforcement Officer be overruled on the 20 foot stacking length and allow the applicant to reduce that to 18 feet, but in the portion of the request regarding the width, to keep that at the newly revised 9 feet width. The hardship is not a result of the applicant’s own actions but is based on historical data for stacking and the big concern is public safety and not having patrons backing in and out of a space so they can get lined up properly with the pneumatic tubes and that the variance is in harmony with the general purpose and intent of the ordinance. The motion was seconded by Mr. Holston. The Board voted 5-2 in favor of the motion. (Ayes: Sparrow, Kee, Lewis, Tuck and Holston. Nays: Kauber and Cross.)

Violation #1 concerning space width to 8 feet 6 inches, Denied. Violation #2, concerning reduction from 20 feet length stacking space to 18 feet length stacking space, Granted.

Thereupon, a 5 minutes recess was taken.

(E) BOA-04-05: 3503 OLD BARN ROAD - FIRST CHOICE SERVICES, INC. REQUESTS VARIANCES FROM THE MINIMUM STREET SETBACK REQUIREMENTS. *VIOLATION #1:* A PROPOSED SINGLE FAMILY DWELLING WILL ENCROACH 2.5 FEET INTO A 30-FOOT SETBACK FROM OLD BARN ROAD. TABLE 30-4-6-1.1 *VIOLATION #2:* THE SAME DWELLING WILL ENCROACH 17.5 FEET INTO A 55-FOOT CENTERLINE SETBACK FROM HAYNE MANOR LANE. TABLE 30-4-6-1. PRESENT ZONING-RS-20(CL), BS-228, CROSS STREET- MICHAUX ROAD. (GRANTED)

Mr. Ruska stated that First Choice Services is the owner of the property located at 3503 Old Barn Road. The lot is located on the south side of Old Barn Road, west of Michaux Road on zoning map block sheet 228 and is zoned RS-20(CL). The cluster option allows the applicant to reduce the setbacks from the minimum RS-20 to RS-12 setbacks. The difference in those setbacks as applicable to this lot is the front street setback. RS-20 setbacks are 35 feet from the property line or 60 feet from the centerline (whichever is greater) and RS-12 setbacks are 30 feet from the property line or 55 feet from the centerline (whichever is greater). When the plat was recorded, the Technical Review Committee did not consider Haynie Maynor Lane to be a private street. It does not meet the Ordinance definition for a private street. It was determined to be a driveway. The rear variance request was advertised for more than was necessary. This was due to the fact that the rear setback is from the property line and not a private road setback. The applicant is proposing to construct a single family dwelling, which will encroach 2.5 feet into a required 30-foot setback from Old Barn Road and 2.5 feet into a 30-foot required rear setback. The lot consists of approximately 12,218 square feet and is rectangular in shape. Every residential lot must have a minimum amount of street frontage and meet a minimum front street setback. All other lot lines and setbacks are determined once the front lot line has been established. The lot has approximately 143 feet of width and 85 feet of depth. The depth is much less than the width. This causes an impact on the building envelope and limits any proposed structure to a maximum of 25 feet in depth. Another factor which influences the building envelope is the fact that the northeast portion of this lot also has a temporary turnaround easement. The area is approximately 30 feet by 40 feet. The easement does not show on the applicant's survey, but is shown on the plat. The easement is in effect until Old Barn Road is extended further north. When the extension occurs, the easement designation will no longer have an impact on the lot. The adjacent properties are also zoned RS-20(CL).

Tom Keever, 314 N. Church Street, attorney representing the applicant, was sworn in and stated that the history on this property consists of when First Choice Services, Inc. purchased the property prior to resubdividing it into residential lots, the deed that they secured indicated that they owned the underlying property that is shown as Haynie Maynor Lane which is to the rear of this lot. Subsequent to their purchase of the property it was determined that there might possibly be competing claims as to the ownership of that lot by separate chains of title. As a result in doing the subdivision they deleted, at least initially, any area located within Haynie Maynor Lane in order to hopefully resolve those issues that may come up down the road. Although diligently pursuing that, they have never been able to resolve those issues between the possible adjoining owner and their claim. As a result there is a lot that is fairly oblong and the point is, through no fault of the developer, he had secured a lot which was very hard to locate a residence on which is comparable to what is in the subdivision without securing this variance. The seller is basically asking for a 2 ½ foot variance on the front and on the back. What they intend to do is to construct on a part of the property the smallest residence which has been constructed in that subdivision and which will just basically limit and meet the minimum requirements of the restrictions for that subdivision. It is felt that this is no detriment to the public and they will construct a residence which is comparable, that it will allow the developer to place a residence on the property that is similar to the other residences in the subdivision and will leave him with the hardship caused by the fact that there apparently was an issue relating to the ownership. They are trying to avoid going through the process of litigating that particular situation.

Mr. Cross asked if it was found that the developer owns the street would they be able to just move the house 5 feet back and everything would be all right? Mr. Keiver responded, yes. The driveway has been there for 50 years and it would simply mean that it would have allowed them to add additional density to comply with the ordinance.

In response to a question by Mr. Tuck, Mr. Ruska stated that the whole development was approved as a cluster development.

Chairman Sparrow asked if there was anyone present who wished to speak in opposition to the request.

Carol Owens, 3608 Haynie Maynor Lane, was sworn in and stated that she is the party that Mr. Keever referred to and she has the original plat that included her driveway. She submitted a copy of the letter from her attorney to the developer and Mr. Keever.

Chairman Sparrow advised the Board members that while they will receive the information, it constitutes hearsay and is an opinion and he is unsure whether the Board can consider it.

Ms. Owens stated that what this letter establishes is that the original owner, Dr. Haynie, who previously owned the house and land that she now owns, purchased this strip of land called Haynie Maynor Lane from Judge Shaw back in 1959. Dr. Haynie is still alive and she contacted him and he did verify this and she has been talking with the opposing attorney and his clients for some period of time prior to her obtaining an attorney on her behalf. Obviously, what happened in this situation is that the land that they now own was sold when Judge Shaw died. The heirs or whoever purchased the land did not do the title search to realize that the road was included in that, so she doesn't see that there is any controversy about who owns the land. She also wished to state that her brother-in-law is a real estate developer here in town and he agreed to help her with this situation and he spoke with Mr. Smith about the fact that once her road was subtracted out of their development that it would be in violation, so that was a known fact up front. That is item four on the list. This was something that was well-known ahead of time. They could have opted to re-do the plat and move over but they did not opt to do that. She feels that this was clearly something that they could have done but did not do and she does not see how they can come now and say that this was not something that was not known up front, it was known up front.

Mr. Cross asked if she objected to the 2 ½ foot variance and Ms. Owens said she did and the reason why she objects is the back of the house is going to be right on her driveway and it is going to be an eyesore.

In response to a question by Mr. Kauber concerning that the TRC did not consider this to be a private street, Mr. Ruska stated they initially advertised that as being a private street and that's why there was a 17 ½ foot setback from that, but that is incorrect. The Technical Review Committee looked at that as being a driveway, so therefore, the setback variance that the applicant is asking for is only 2 ½ feet. He is making no statement in regard to ownership in this matter.

In response to questions regarding the temporary turn-around easements, Mr. Ruska stated that it does affect the building envelope to some extent because while that is still in existence, there is a note on the plat that says that those temporary turn-around easements will exist until such time as the street is extended.

Mr. Kauber stated that he wished to be clear on what Ms. Owens is claiming here. It sounds as if her claim is that they had a choice and they knew what the situation was so it is not something that just happened inadvertently here. Ms. Owens stated that was exactly right.

Mr. Cross stated that in regard to BOA-04-05, 3503 Old Barn Road, that the Zoning Administrator's facts be incorporated into the record and based on the stated findings of fact, he moved that the Zoning Enforcement Officer be overruled and the variance granted, based on the following: If the applicant complies with the provisions of the ordinance, no reasonable use of the property can be made because of the unique

shape of the property, the various easements placed on the property causing the building envelope to be unique. The fact that the proposed structure on the property as requested by the variance is actually the smallest building permitted under the development showing that they are making the most reasonable use with the variance granted. The hardship for which the applicant complains results from unique circumstances related to the applicant's property for the same reasons. The hardship results from the application of the ordinance to the property because of the setbacks being too large for purposes of constructing such a minimum structure on a residential property and that the hardship is not the result of the applicant's own actions due to the fact that the easements and the building envelope are as when they bought the property. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit and assures the public safety and welfare and does substantial justice. The motion was seconded by Mr. Tuck. The Board voted 5-2 in favor of the motion. (Ayes: Sparrow, Cross, Kee, Tuck and Holston. Nays: Kauber and Lewis.)

(F) BOA-04-06: 2106 GLENSIDE DRIVE - JAMES LEWIS REQUESTS A VARIANCE FROM THE MINIMUM SIDE SETBACK REQUIREMENT. *VIOLATION:* A RECENTLY CONSTRUCTED SINGLE FAMILY DWELLING ENCROACHES 0.8 FEET INTO A 10-FOOT SIDE SETBACK. TABLE 30-4-6-1, PRESENT ZONING–RS-12, BS-177, CROSS STREET- LUCAS AVENUE. (WITHDRAWN)

This item was withdrawn at the beginning of the meeting.

(G) BOA-04-07: 2005 EAST WENDOVER AVENUE - WILLIAMS PROPERTY LMTD PARTNERS REQUEST A VARIANCE FROM A MINIMUM CENTERLINE STREET SETBACK. *VIOLATION:* A PROPOSED CARWASH BAY ADDITION WILL ENCROACH 7 FEET INTO A 100-FOOT SPECIAL CENTERLINE SETBACK FROM EAST WENDOVER AVENUE. SECTION 30-4-7.3(W), PRESENT ZONING-LI, BS-13, CROSS STREET-RALEIGH STREET. (GRANTED)

Ms. Lewis stated that she had visited this property.

Mr. Ruska said that Williams Property LMTD Partners is the owner of a parcel located at 2005 East Wendover Avenue. The carwash portion is addressed as 2007 East Wendover Avenue. The property is located at the northwest intersection of East Wendover Avenue and Raleigh Street on zoning map block sheet 13. The lot is currently zoned LI. The lot contains a carwash and convenience store. East Wendover Avenue has a special setback requirement. The setback requirement is 100 feet from the centerline. This portion of East Wendover Avenue has 120 feet dedicated for street

right-of-way. The applicant is proposing to demolish the end wash bay and then extend the adjacent bay six feet towards East Wendover Avenue. The addition will encroach 7 feet into a 100-foot setback from the centerline of East Wendover Avenue. The addition is proposed to stay in line with the existing convenience store. The portion of the carwash building that is located closest to Raleigh Street already encroaches nine feet into the 100-foot centerline setback requirement. This encroachment is because East Wendover Avenue slightly curves and this portion of the lot depth slightly decreases. The adjacent properties located to the north are currently zoned RS-7, the properties located to the east and west are zoned LI, and the properties located on the south of East Wendover Avenue are zoned LI.

Doug Bryan, 5695 Heather Drive, Randleman, NC, was sworn in and stated that he had some information he wished to present to the Board members for their review. He stated that these are responses to the criteria to meet a variance. The community is better served by the addition of a laser wash. At present the facilities are outdated and Dr. Michael Puckett is planning to buy that car wash from the adjacent Wilco that owns the property and upgrade it to make it more useable. Currently it is a car wash that has been the same for the past 22 years and very little improvement has been done to the property. He plans to do a lot of upfitting and upgrading. The exit to the proposed laser wash is impacted because the wall is extended and the extension will make a very tight turning radius also there is the possibility of tearing down a portion of the retaining wall and moving back into a 10 foot to centerline easement. The problem with the retaining wall is that you cannot look at the face of the wall and count that as 10 feet off, you have a 4 to 5 foot footing underneath that is going to have to be dug into. The proposed laser wash will be located at the end of the property in the second bay area. The first bay is being eliminated and has been eliminated to comply with the requirements to efficiently subdivide the property. The elimination of the first bay will also create a lane that will allow traffic flow around the car wash without having to go through the wash bay. He provided two photographs which showed the back of the wash in relationship to the brick retaining wall. The wall is adjacent to the Wilco property and has been brought down to where it is the same height as a screen or fence. Currently the off-set for the equipment room and numerous vacuum bays are within the 100 foot off-set area. The addition to the front of the regular car wash bay will have no effect on the property because one of the walls will fill in the area with a vacuum bay. They feel that the variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit. The line that is already in the off-set area has been there for 22 years and there are vacuum bays, a vending area and the mechanical room, plus the fact that the building that Wilco owns is already extending into that 100 foot area also. A well lighted area will be created in the thru-lane adjacent to the proposed laser wash. The option of a laser bay will give potential customer more security by making transactions and having their cars washed without ever having to

leave the car. This should be a great benefit after dark. The small fenced in area between Wilco and the car wash is sometimes frequented by vagrants and they feel that it is in the best interest of the community to serve to keep this area open and well illuminated.

In response to a question by Mr. Tuck, Mr. Bryan stated that there are 2 walls and the reason they are asking for 7 feet is because you have to put bollards on there so there would be 6 feet of wall and then room for the bollard.

In response to a question by Ms. Lewis, Dr. Puckett, who was sworn in, stated that the hours of operation would be 7:00 am until 10:00 pm. In reference to the hardship, with the tight turning radius, one of the main concerns is with the use of the property, they can still be in compliance and have the car wash put there, but when the car wash gets busy at the rear there are a lot of people who do “bucket washing”. They will get out and dry their cars and congregate along the outside wall. There are signs warning against this activity, but the signs are disregarded. Without having some space or visibility for those people he feels it would make the exit more visible as well as for the people in the back and would make it safer for everyone.

Chairman Sparrow asked if there was anyone present who wished to speak in opposition to the request and no one came forward.

Ms. Lewis stated that in regard to BOA-04-07, 205 East Wendover Avenue, that the Zoning Administrator's facts be incorporated into the record and based on the stated findings of fact, she moved that the Zoning Enforcement Officer be overruled and the variance granted, based on the following: The practical difficulties is that this is an older car wash that serves a large part of the community and she feels that them being able to drive through does make the service more condusive to being used. The hardship of which the applicant complains results from unique circumstances related to the property as this is an older car wash and needs to be upgraded and the layout of the property does not allow it to be done any other way. The hardship is not the result of the applicant’s own actions simply because of the way that Wendover Avenue curves at that particular point and the fact that the car wash has been there for 22 years. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit because it will enable a safer use of the car wash as a whole. The variance assures the public safety and welfare because as indicated previously there appear to be no safety or welfare issues. The variance does substantial justice because it will cause no problems in terms of getting in and out of the car wash and will provide safety for the patrons. The motion was seconded by Mr. Tuck. The Board voted 7-0 in favor of the motion. (Ayes: Sparrow, Kauber, Cross, Kee, Lewis, Tuck and Holston. Nays: None.)

APPEAL FROM HISTORIC PRESERVATION COMMISSION

(A) BOA-04-08: 607 PARK AVENUE - CAROLE, DONALD, AND MICHAEL ZELLMER APPEAL THE DECISION OF THE HISTORIC PRESERVATION COMMISSION DENYING A CERTIFICATE OF APPROPRIATENESS ON OCTOBER 29, 2003. THE APPLICATION WAS FOR EXTERIOR CHANGES TO A DWELLING INCLUDING PAINTING THE EXTERIOR BRICK PRIOR TO APPLICATION SUBMITTAL AND COMMISSION APPROVAL. ON NOVEMBER 17, 2003 AN APPLICATION FOR REHEARING CONSIDERATION FAILED BECAUSE NO HISTORIC PRESERVATION COMMISSION MEMBER MADE A MOTION IN FAVOR OF THE APPLICANT'S REHEARING REQUEST. SECTION 30-4-4.2(E)5), PRESENT ZONING-RS-7, BS-3, CROSS STREET-CHARTER PLACE. (CONTINUED)

Ms. Lewis stated that she also visited this site.

Chairman Sparrow stated that the Board's level of review is to determine whether or not there are sufficient findings by the Historic Preservation Commission to justify and warrant its findings.

Counsel Carr added that they should also consider whether all procedures set forth were properly followed. You would simply look at the procedures followed at the Historic Preservation Commission to make sure that all procedures set forth by that board were properly followed and that the Board's decision was based on competent facts.

In response to a question by Ms. Lewis, Counsel Carr stated it would consist of competent evidence, much like an example of what Mr. Sparrow brought up in an earlier case about a document being brought forward that was hearsay. If it doesn't have a proper foundation or proper basis or something like that, it might not necessarily be a competent fact. What the Board is to do is read the record that was provided and find if that is evidence that a reasonable person would consider to form the basis of the Commission's decision.

Chairman Sparrow stated that, in lay terms, their job was to review the record before them and then hear either Mr. Ruska or speakers and determine whether or not there is any error in the record and then whether the record, on it's face, supports the decision that was made. The Board cannot take fact evidence.

Ms. Lewis asked if something she saw might be contrary to what is written in the record, she cannot consider it?

Chairman Sparrow stated she could not.

Counsel Carr stated that if it would help, she had a handout from Mr. Ducker at the Institute of Government that speaks to what the Board's role is and she could submit that information. After submitting this information Counsel Carr stated that on the very last page there are some bullet points that are the 5 criteria that the Board is to follow in assessing this matter. This gives a brief overview of what the duties of the Board are with regard to this appeal.

Mr. Ruska said that Tax Records indicate Donald and Carol Zellmer are the owners of a parcel located at 607 Park Avenue. This lot is in the Charles B. Aycock Historic District. The lot is located on the north side of Park Avenue south of Yanceyville Street on zoning map block sheet 3. The property is currently zoned RS-7. The property owner is appealing a decision of the Historic Preservation Commission to deny a Certificate of Appropriateness, application Number 461, in reference to the painting of exterior brick and the replacement of the exterior front door. The application was denied at the October 29, 2003 Historic Preservation Commission meeting. The property owner appeared at the November 19, 2003 Historic Preservation Commission meeting to request a reconsideration of her application. The reconsideration failed because no Historic Preservation Commission member made a motion in favor of the applicant's rehearing request.

Included in each BOA member's packet is a memo from the Preservation Planner describing why the reconsideration was denied. The property owner was issued a Notice of Violation on October 21, 2003 for painting the exterior brick and replacing the front door without a Certificate of Appropriateness. The remedy to correct the violation was to obtain a Certificate of Appropriateness or return the structure to its original form. The application was filed on September 23, 2003 and was scheduled for the October 29, 2003 Historic Preservation Commission meeting. Prior to that meeting, the property owner's contractor began the work and proceeded working without obtaining a Certificate of Appropriateness. The adjacent property to the east , west, and south are zoned RS-7 and the adjacent property located to the north is zoned GO-M.

Carole Zellmer, owner of 609 Park Avenue, was sworn in and stated that she had none of the information that the Board had. She hopes that what she has is appropriate. She has never seen the Certificate of Appropriateness application that was signed by the contractor. When they hired the contractor to do the house, the original plan was for ----

Chairman Sparrow interrupted and stated that the Board could not use a summary of the facts. She could only tell the Board, based on the record, why she feels that the Historic Preservation Commission was incorrect in its ruling.

Ms. Zellmer stated that the text of the guidelines in effect at the time of the Notice of Violation regarding painting the exterior of a house in the historic district was that "the following projects do not require a COA – Painting. " The guidelines have since been changed and a version that is now published that says, "The following projects do not

require a COA – Painting – changing color, touch-up, et cetera." Her contractor did not think she needed a COA as she had painted other houses in the neighborhood and had never requested a COA. She has a picture of a brick house in Fisher Park that has been painted that the Historic District Commission did not look at when she went the first time. The house is attractive but she does not really think that is part of the issue. The other issue she has is that the remedy that the Historic District Commission proposed was that she remove the paint from the house. So in addition to this information and the evidence that their own guidelines say that she did not need a COA to paint the house. She also had a notarized letter from Anthony LePino, who is from the American Institute of Architects and Vice President of Thomas H. Shues, indicating that the house is appropriate architecturally and that the painting was the appropriate thing to do to seal the brick building which was deteriorating because of water damage and that the color is appropriate.

Counsel Carr pointed out that whatever Ms. Zellmer just produced is not in the record and could not be considered.

Ms. Zellmer stated that she feels that is it clear from the guidelines that were in effect when the house was painted, that indicated that no COA was required. She stated it could not be more clear. A COA is not needed to paint a house. She stated that in the guideline portion and on the City's own website, it stated that no COA was required. She pointed out that the text had not been changed and it was the original typeface. She cut it out of the documents and pasted it into Microsoft Word and printed it out.

Stefan Leih Kuns, Preservation Planner with the City of Greensboro, Department of Housing and Community Development, was sworn previously and stated that she does not have a copy of the guidelines in front of her as she planned on relying on the verbatim minutes. She would compare the document submitted by Ms. Zellmer with what was in the minutes when the Commissioners cited and made their finding of fact.

Chairman Sparrow stated that he thought there was an error of law in the proceedings they are entitled to correct. They are entitled to confirm that is what the law is.

Counsel Carr stated that she had assumed that the planner would know if that is, in fact, some of the guidelines --- regardless of whether they were the ones relied on by the Board at that time.

Ms. Kuns stated that what was provided is actually not the guidelines, they are in the Historic District Manual but they are not the guidelines. There is much more extensive information in the actual guidelines that the individual did not supply to the Board.

Chairman Sparrow asked if these were the guidelines that are published on the website.

Ms. Kuns stated that is a small portion of the applicable guidelines.

Ms. Zellmer stated that is the verbatim excerpt from the guidelines. If Ms. Kuns would provide the Board with a copy of the guidelines, the 2002 guidelines, you will see that what she provided was exactly what it says. It is true, and she does not argue against her, but it does on at some great length of all kinds of different guidelines that are in play in this. However, her contractor relied on these bullet points which are above the guidelines and when you look at the electronic documents and search on "exterior painting" the hit you get is, "No COA required". Now they want her to take the paint off the house and it will destroy it.

Counsel Carr stated that with regard to the issue that is before us, it appears that these are, in fact, guidelines that the Historic Preservation uses and it is appropriate for the Board to consider these. Again, if the speaker makes reference to what her contractor did or did not do and those are facts not in the record, that information cannot be submitted. She would again admonish the Board that they are bound by the record.

Ms. Zellmer stated that when she was cited for a violation and told that she had to apply for a COA, she did. The reality is that her contractor did not apply for a COA because she did not need one.

Mr. Kee asked if Ms. Kuns was stating that the detailed guidelines or summary would say something contrary to what Ms. Zellmer has presented.

Ms. Kuns stated that she would. There is additional information ----

Mr. Cross stated that there is a part of the front part of the guidelines that says what Ms. Zellmer is saying and then if you read further into it, seeking further details on what the general rule is that was stated in the front, it stated more specifically and clearly that you needed to get the COA for this.

Ms. Kuns stated that was correct.

Ms. Zellmer stated that her contention is that since there was no ambiguity in the fact that she did not need a COA to paint the house, what would be the point in reading the additional guidelines? Why should they need verification if there is no ambiguity?

Mr. Tuck stated that on the sheet that was presented, at the top it says, "Text of guidelines in effect at time of Notice of Violation regarding painting". In bold type, "The following projects do not require a COA". The first item was, "Painting". Then you say that underneath the dotted line, text of guidelines are re-written after the Notice of Violation regarding painting. Bold type: "The following projects do not require a COA – Painting – Changing color, touchup, et cetera".

Ms. Zellmer stated that was correct.

Mr. Tuck asked if that has, in fact, changed?

Ms. Kuns stated it has and in light of this particular situation, the Historic Preservation Commission just recently, in the course of about a year-and-a-half, revised the Historic District Guidelines and over the course of eight public hearings and review meetings, it was not brought out by anyone in the community that these guidelines were unclear in regards to painting. However, seeing that someone has decided to interpret it in this respect, the final version of the guidelines, which is this final document that had not been printed at the time, those were just adopted as text with no images, this is the final version that is basically hot off the press as of last month. They went ahead and changed that to avoid this situation in the future.

Mr. Tuck pointed out that it says that in the rewritten text, “The following project do not require a COA – Painting, changing of color, touch up, et cetera”. He asked if Ms. Kuns was saying that if the house was green she could have changed it to blue, but she cannot change it from brick?

Ms. Kuns stated that is correct, however, this is a materials issue. If you have clapboard siding and it is painted blue you do not need a COA to change that color. However, with an unpainted masonry that is addressed in the masonry and stone section of the guidelines, Guideline Number 4 states: “Painting or applying coating such as cement or stucco to expose masonry stone is not appropriate because it will change the historic appearance of the masonry stone feature and can accelerate deterioration. Previously painted surfaces may remain painted.” In this situation, this house was not painted. She stated she had a series of photographs that she would show to the Board members.
Mr. Tuck stated that to follow up on that, if he opened a document and it said the following do not require a COA and painting is very specifically there and there is nothing behind it that says, “see exceptions on page such and such”, that he would definitely paint it.

Ms. Lewis stated that her interpretation is the same. On that street there are eighteen houses that have part of their brick painted. The one next door to this house has their brick painted and there is a house at 744 Park that all the brick is painted beige, just like the house in question. So, she feels that either the guidelines have to be fair and apply to everybody or they should not be in there.

Chairman Sparrow asked if pictures were shown at the hearing previously. Ms. Kuns stated that they were and she was going to show the exact same as the ones shown at the hearing.

Chairman Sparrow asked if all of the photographs that Ms. Kuns was going to show are

photographs that were introduced into evidence at the hearing. Ms. Kuns stated they were. City staff was advised by legal staff and Mr. Ruska not to present any evidence that was not presented to the Historic Preservation Commission, so all her comments and points of clarification were presented in previous minutes, the verbatim minutes that were provided to the Board in their packet.

Ms. Zellmer stated that in the document that she was working from, which was published on the City of Greensboro website at the time the violation was issued, that immediately above this it states, “Typical historic wall materials found within the district include wood, clapboard siding, wood shingles in both hue, form and pattern shapes, stucco, brick, and stone.” And then it goes on to the section where it says, “The following project do not require a COA.” These issues are covered under this and stucco, brick and stone is covered some place else, her contention is when you get to the place where the answer you are looking for is, you stop reading the dictionary.

Chairman Sparrow asked if there was anyone present who wished to speak in opposition to the request.

Stefan Leih Kuns, representing the Historic Preservation Commission, stated that she hates to speak in opposition to this item but that is what she has been asked to do. She is just here to present the facts that were presented to the Historic Preservation Commission.

Chairman Sparrow stated that the Board members did not have the photos in their packets and he feels that Ms. Kuns will be making a new record for them.

Ms. Kuns stated that these photos were presented to the Historic Preservation Commission and it was her understanding that the Board would be looking at the facts that were presented to the Historic Preservation Commission to determine whether or not their decision was appropriate.

Chairman Sparrow stated that the Board has to rely on the record before them and this was additional record and was evidence.

Counsel Carr stated that from what she is hearing from staff, these were introduced during the hearing and were considered by the Board but, unfortunately, what the Board of Adjustment members had is an incomplete record.

Chairman Sparrow stated that they would not be able to make a decision today and he would listen to a motion. He is not going to rule unless the Board has a full record.

Mr. Ruska stated that they would get paper copies of everything that the Historic Preservation Commission saw as part of this case.

Ms. Kuns stated that she could continue without the pictures. They just help to illustrate

the issue but the facts tell the story as well.

Counsel Carr stated that to the extent that Ms. Kuns is a representative of the Historic Preservation Commission and counsel for the Historic Preservation Commission is here as well, she would just state that they do it at their own peril.

Chairman Sparrow stated that he would still listen to a motion to continue.

Mr. Cross stated that there are 4 items that were being appealed and at least 3 of them don't really need these pictures. He feels that number 2 is the only one that questionably might need this type of the record. The first one seems to be that they are dealing with whether or not the manual says you can paint or not and he does not need to see a picture of a house to make that decision. The third one deals with the fact that they did not allow the applicant to present information about architects and, again, he does not see why the pictures are needed for that. The fourth one talks about why the Commission did not let them reconsider the application on November 19th, and he does not need to see pictures for that. The 2nd one he is unclear about because that seems to be when the request for the COA and all the Board has heard so far from the applicant is that they did not need one anyway. So he does not understand that appeal. He has not heard a case for that one so far.

In response to a comment by Chairman Sparrow, Ms. Kuns stated that she is presenting actual facts from the written record and the same facts that the Historic Preservation Commission reviewed. She feels uncomfortable that she is having to speak on the side of the opposition as she is uncomfortable opposing and being in that position.

Chairman Sparrow stated that if all she would be doing is tell the Board members what is in the record that they have before them, then they do not need for her to testify.

Counsel Carr stated she did not know that Ms. Kuns was testifying, she was advocating the position of the Commission.

Ms. Kuns stated that she would present a copy of the Certificate of Appropriateness application. It was filed on September 23, 2003 by Cathy Sterling and in September of 2003 the Historic Preservation staff, herself and Mike Cowhig, did carry on phone conversations with Cathy Sterling, the applicant. So there are 2 sets of parties they are dealing with and it is in the record.

Mr. Tuck said that information was given in the record today but it was not in the transcript that was received from the Court Reporter.

Chairman Sparrow stated that that information cannot be received then.

Ms. Kuns stated that she thought it was included in the packet as well. She asked if she

could present the Board with this piece of evidence.

It was learned that the Board members did, in fact, receive that information in their packets.

Ms. Kuns stated that she wished to point out that, yes, indeed, an application for a Certificate of Appropriateness was received by the Historic Preservation Commission staff on September 23, 2003. Because of the way the system works, they have to receive applications 2 weeks prior to the Commission meeting, so this was put on the October meeting. She feels that Mr. Ruska misspoke earlier when he said November 19th meeting. It was from the October meeting agenda and on October 20th, in preparation of the meeting, she personally, went out in the field and took the photographs, the routine photographs, to use at the Commission meeting and the work was in progress. So at some point from September 23rd 2003 to October 20th 2003, work commenced even though they had filed for a Certificate of Appropriateness. Obviously, they needed a Certificate of Appropriateness --- she was talking about Cathy Sterling, not Ms. Zellmer – she was talking about the contractor that was hired to do this work for them, was aware that they needed a Certificate. The Commission denied the application based on the fact that the guidelines state that it is inappropriate to paint and coat brick and masonry surfaces. She can understand there is some confusion there. It was never brought out the light of review of these guidelines that were very extensive process. In addition, the Commission actually states, not that the applicant is to remove the paint ---- she quoted from the written record, it says that it "Denies a Certificate of Appropriateness to Cathy Sterling for work at 607 Park Avenue and directs that staff issue an appropriate or cause the issuance of an appropriate order requiring the removal of the paint that was improperly applied." And then it continues to be interrupted by Commissioner Freyaldenhoven that---- This information is on page 25 of the transcript of the October meeting ---- and it continues to say, "they asked for an amendment to allow staff to evaluate a test removal process to see the feasibility of the condition." That motion is accepted. As they moved forward in this process they came to the request for reconsideration. When the applicant came in front of the Historic Preservation Commission for that request for reconsideration, no tests had been conducted at that point in time. The applicant came with information from an architect in Milwaukee or Wisconsin who testified about mid-western architecture, which does not relate to the architecture here in Greensboro. In fact, she would introduce that the photographs that she was showing and the photographs and also what was introduced by Mike Cowhig at the Historic Preservation Commission meeting, shows that there are several unpainted brick, craftsman style structures on Park Avenue that are indicative of that particular neighborhood. It does not mean that brick has never been painted, but it means that it is a characteristic of this street and this particular neighborhood.

Again, in the minutes of the November 19th 2003, the Commission again talked about

what was being asked of the applicant and they were asking that some effort be made to show ---- to prove to them that this paint cannot be removed and that effort had not been conducted at that time.

Mr. Cross asked if their ability to have this architect information presented at the October meeting was denied or was it just at the November meeting?

Ms. Kuns stated that was the applicant's evidence of new information that she brought forward at the request for reconsideration at the November meeting and the Commission did not feel that was the information that they had asked her to bring forward.

Mr. Cross pointed out that the appeal says that was at the October meeting. It says, "We appeal the refusal of the October 29, 2003 meeting to allow us to present information from architect supporting our contention that the current condition and appearance of the house is not appropriate."

Ms. Zellmer stated that was correct. She had packets of information of houses in Fisher Park and also pictures and statements from Lewis Wasserman who wrote the book, The American Bungalow, who is an expert on bungalows and he said it was okay.

Mr. Cross asked if Ms. Zellmer can show that they denied her ability to present that information of the architect at the October meeting? He stated that he understands that the Commission would not allow that information at the November meeting, but can she show that they would not allow that information at the October meeting.

Ms. Zellmer stated that she could not show any information about the October meeting because she requested a copy of the minutes and did not receive them. She has also not received a copy of the COA, which she requested. She has none of the information that the Board has.

Ms. Lewis asked if the appellant should have copies of everything that is given to the Board.

Counsel Carr stated that they should.

Ms. Lewis asked if Counsel Carr had made the effort to see that the applicant had received copies of everything.

Counsel Carr stated that she does not prepare any of the records.

Ms. Lewis asked who should have done that?

Mr. Ruska asked Ms. Zellmer if she received a copy of the transcript?

Ms. Zellmer stated that she did not.

Mr. Ruska stated that her name was on the mailing list but that may have just been for an agenda.

Ms. Zellmer stated that she did receive a copy of the agenda.

Mr. Michael Zellmer stated that all he got was a copy of the agenda.

Ms. Zellmer stated that all they got was violations and agenda and nothing else and she never received a copy of either transcript not a copy of the Certificate of Appropriateness. She had called the office and requested a copy but had not received them.

Ms. Lewis stated that she had a problem which is that if the original guidelines that the City posts on its website says you do not have to have a COA for painting, and that was not considered at the original hearing, then she cannot get past that and she does not know how the Commission could not have taken that into consideration in terms of whether or not this family could or ---- she was not talking about what comes back in sub-text ---- but generally speaking, when you have something that has to be referred to for clarification later, it says, “refer to”. So her feeling is that if the Board looks at these bullet points, she does not know if it was an error in law or not, but it certainly was an error in terms of what was available to the person who is appealing and in terms of due process, the applicant certainly has not had due process in that she has not had the material that the Board has and in terms of the decision being supported by competent material and substantial evidence, again, if what is on the website was not considered then she does not know how the Board can say that they considered ---- if the City of Greensboro posts that, and that is what they are standing on, then it was not followed.

Mr. Tuck asked if the Certificate of Appropriateness was received in the office on September 23rd. Ms. Kuns stated that was correct. Mr. Tuck stated that she went by the site on or about ---- Ms. Kuns stated October 20th as they usually do their photo-taking about a week prior to the Historic Preservation Commission meeting and they were in the process of doing the work when she went out to take photographs.

Mr. Tuck asked if Ms. Kuns said anything to them?

Ms. Kuns stated that she told them to stop working and that they were in violation of the Historic District ordinance because they had not received approval to do the work.

Mr. Holston stated that 9 days later was the meeting. Ms. Kuns said that was correct.

Mr. Holston said that he heard and agreed in some regard, with the website and the verbiage that Ms. Zellmer gave with the cut-and-past excerpt, but someone did apply for a Certificate of Appropriateness and it does say on the back, “This is to include painting the brick” and that was done a month ---- five weeks before the meeting. So somebody had to know ---- obviously Cathy Sterling --- and it could have been fate that she put “including painting the brick” on the back. Maybe she was just listing the scope of what she was going to do. It just seems that there was some miscommunication on both sides and really no resolution.

Mr. Cross asked on September 23rd of 2003, what were the guidelines on painting?

Ms. Kuns stated, that you need a COA to put coating, as she had read earlier on brick masonry. It did say that any exterior surfaces or whatever the name of the chapter is, that painting is, in fact, under that bullet point, but it is nowhere in any of the guidelines that it is okay to paint brick masonry. She also added from the verbatim minutes, at the October 29th meeting, Chairman Deaton said, “So you had looked through the guidelines and couldn’t find where you need it and then you asked the paint company?”
And Mr. Zellmer responded, “I did not have a copy of the guidelines.”
Chairman Deaton states, “You didn’t have a copy of the guidelines?”
And Mr. Zellmer says, “No, sir.”
Chairman Deaton says, “Okay, did the painting company have a copy of the guidelines?”
Mr. Zellmer says, “Not that I’m aware of.”
Mr. Deaton says, “So how could they have told you one way or the other whether you needed a COA?”
She reiterated that a Certificate of Appropriateness was received on September 23rd, the applicant had had previous contact with their office, especially in regards to it not being just a painting issue, but they actually replaced a door without approval as well. In February of 2003, staff had worked very closely with Carole Zellmer on the replacement of the door, which they, again, went ahead and did without approval. So there is a couple of different things going on here. Staff would like an opportunity to do some testing of different chemical treatments and have the state preservation office take a look at this. That was really what the Commission asked when they made their finding of fact and their motion.

Counsel Carr stated that she would like to ask the appellant if she has had sufficient time to review those transcripts and if not, she would leave it in the Chairman’s hands as to the hearing and going forward today.

Chairman Sparrow asked Ms. Zellmer if she had had sufficient time to review the transcripts of the proceedings.

Ms. Zellmer stated, no.

Chairman Sparrow asked if this matter were continued for a month, would she have had

an opportunity to review them?

Ms. Zellmer stated she would.

Chairman Sparrow asked Ms. Zellmer if she would have had an opportunity to do some testing.

Ms. Kuns stated that they should. As a matter of fact, Mitch Wilds from the state Historic Preservation office was in town today and they asked him to take a look at the building and she was hoping that he had time to take a look at that and make a rendition.

Ms. Lewis asked if the Board would need permission from Ms. Zellmer to do that?

Ms. Kuns stated that permission would not be needed as since she is staff working with the Historic Preservation Commission, she actually has authority to go on people's property and as a State agency, Mitch Wilds has the permission to do the same.

Mr. Tuck asked Ms. Zellmer if she had any objection to that ----- to having her house tested and Ms. Zellmer stated that she did have objections because she had asked a contractor at the meeting, Mr. Freyaldenhoven had suggested that they have test patches put on and that she seek advice from contractors about the advisability of removing the paint. She did have a contractor come and look at the house and he wrote a letter indicating that ----- she tried to present that letter at the October 29th meeting and not only, after she had shown it to Mr. Williams the Assistant City Attorney, and he said that she could use that as evidence and when she tried to present it, not only would they not look at it but one of the members of the Board suggested that she had forged the letter because she had hired the contractor it had more credence.

Mr. Cross asked if that was the November meeting she was talking about?

Ms. Zellmer stated that was the November meeting. Dan Curry from the City had gone out --- Mike Cowhig and Dan Curry had looked at the house and Dan Curry said that he was not optimistic that the paint could be removed.

Chairman Sparrow stated that this issue needed to conclude and asked Ms. Kuns if she had anything else to add.

Ms. Kuns stated that staff would like the ability to do some testing and Mr. Curry and Mr. Cowhig's testimony from the verbatim minutes is that their feeling was that it was very porous brick and they were not optimistic but the only way to actually tell for sure is to do a test. There are some chemicals and products by a company called, Prozoco, that makes a paint remover called, Sure-Clean. It is staff's opinion that they are not

optimistic but they cannot completely rule it out. They are asking for a good faith effort and to do some testing to determine if the paint can or cannot be removed.

Chairman Sparrow stated that the record just states, “testing”.

Ms. Zellmer asked if she could get some clarification about removing the paint and if they say the paint can come off the brick, who pays for it?

Chairman Sparrow stated that she would pay for it if that was the determination.

Ms. Zellmer stated that the paint contractor said it could probably be removed by sandblasting but it would cost several hundred------

Chairman Sparrow stated that was out of the Board’s jurisdiction as well and they could not look at what happens after it happens. The fall-out from the decision has to be made from the record.

Mr. Cross stated that the hardest thing the Board has to consider --- and the item that he is having difficulty with is the appeal about whether or not painting is required to get a COA or not. In Number 2, they appealed the action to deny the request for a solid wood door. It is true, based on this that the new door be approved and then the Board acted against the recommendation, but he does not see that as an arbitrary and capricious decision. The Board discussed it and they had a reason to do it that way and even though they disagreed, all the evidence was considered and the formalities were recognized, so he sees the applicant loses on Number 2. Number 3, the appeal to allow them to present information about architects supporting a certain contention at the October 29th 2003 meeting, and if that in fact happened, according to the record, he feels that there is an issue here and it needs to be considered because there would be evidence that was not considered. He thinks there is a mistake in this appeal and he thinks that the refusal to accept that information was done at the November 19th meeting when they had no obligation to do it. There was a motion to reconsider the appeal based on the information. That was the new information that they presented and the Board elected not to reconsider. He thinks that is not arbitrary and capricious. Nobody made a motion and that seems acceptable. If, however, it can be shown on the record that they denied that information at the October meeting, he is willing to hear that. Number 4, they appealed a refusal of the Historic District Preservation Committee to reconsider the application and the COA at the November 19th meeting. Again, the Board originally said, “if you get the paint samples and do the test samples, we’ll reconsider it.” They did not do that, they came back with something else, the Board viewed that that was not sufficient enough to reconsider the entire application in total, which is what the motion was for, and the Board said, “no.” That decision also appeared to be reasonable and not arbitrary and capricious and whether you disagree or agree with it, it sounded reasonable and they didn’t do anything that was wrong.

Now, back to Number 1, which is the biggest problem we have here today, in his opinion. They say there is a rule out there that says painting does not require a COA

and there's apparently some other rule somewhere else that it does require a COA, but the Board has never seen these rules. He cannot make a decision unless he has something to interpret. If he is making an interpretive decision, he needs to be able to look at the things he is supposed to be interpreting. He is willing to forgo and consider that later, and he may rule on the other 3 right now, but it limits their discussion at the next meeting because the Board does not need a transcript to make that decision. They only need the rules and make a decision based on their interpretation of the rules at the time the painting occurred.

Ms. Lewis stated that she wished to follow up on that. The Board has to either accept a premise or not accept a premise on Number 1, and that is that the website that the City had posted, was accurate. If it was accurate, then the appellant followed what the City said she had to do. If it was not accurate, then whose responsibility was it to make sure that the website was accurate. Her contention is that if you go to the City's website and it says that painting does not require a COA, then she does not see where a person has any responsibility to proceed further than that. So for the Board to request the guidelines and to read them in depth, to her, is begging the issue. The issue is that any citizen should be able to go to the website for something as simple as painting a house.

Mr. Tuck stated that he agreed --- and whether it is the website or something else, he does agree with Ms. Zellmer in, once you find the answer you are looking for, you tend not to read any further. He would disagree with Mr. Cross on one item, Number 4, and that is, whereas he agrees that they asked to have some testing done, in her mind she had new evidence that, for whatever reason, the Historic Preservation Commission chose not to receive that, and to him, that is just arbitrary. If one person feels that they should have covered their bases and opened up the hearing and heard what she had to say.

Mr. Cross stated that the reason he said that is, the standard for denying considering that information is different than if it was in the original hearing. If you accept the new information, what you have done is you have allowed the whole hearing to be reopened and re-debated again. So it has to be a much higher level of, does the Board consider that type of information worthy to reconsider the entire matter. The Commission decided not to reconsider it and maybe this Board disagrees with that, but can we say it was an arbitrary and capricious decision. He does not feel that the Board can, based on the record that he has seen. That's the way he sees it.

Counsel Carr stated that she had concerns about a statement made by Ms. Lewis regarding that the Board can only consider what is in the record. Her concern about the applicant's reliance on something that was on the website, she is not sure that the record supports that that is where she got her information. That was said today, there were excerpts pulled from the website today for illustrative purposes. The record does

not suggest that that is where they got their information. Although she feels that Ms. Lewis brings a laudable point to the table for discussion, it is not part of the record.

In response to a question by Mr. Cross, Chairman Sparrow stated that procedurally, some of the items can be decided or continued, grant them all, deny them all or remand all or a portion of them.

Counsel Carr stated that she would only caution the Board members that the appellant has made a statement to this Board that she did not have sufficient time to read the record. To the extent that any of the decisions you make with regard to 2, 3 or 4, are reliant upon record reviews, she thinks it is incumbent upon the Board to give her the opportunity to review those. That would be her only caution.

Mr. Tuck asked if she is unable to produce or introduce any new evidence what does it really matter whether she reads over the materials or not.

Chairman Sparrow stated that she would be able to argue with the benefit of the record and at this point, she did not have that.

Mr. Tuck stated that based on that information he would move that this item be continued, seconded by Mr. Cross. The Board voted 7-0 in favor of the motion. The Board voted 7-0 in favor of the motion. (Ayes: Sparrow, Kauber, Cross, Kee, Lewis, Tuck and Holston. Nays: None.)

Counsel Carr stated that she would assure the Board that all members of the Board as well as the appellant have every single document that was a part of that record before the hearing next month.

Mr. Cross stated that he would also like copies of the relevant statutes and ordinance that the Board is supposed to be interpreting.

In response to a question by Ms. Lewis about the regulations that were in effect and that would be in effect at the beginning of this situation as well as what it is now, Counsel Carr stated that if there has been a subsequent change it does not have any bearing on the appeal. The Board is to determine what the rules were at the time that the action was taken, not necessarily the appeal. Much like the previous applications where the Board considered decreasing drive-thru space, you have to consider what was present at the time. If there has been a subsequent change, it is not what these people relied on in making their decision.

Mr. Holston left for the remainder of the meeting at 5:40 p.m.

VARIANCE

(A) BOA-04-09: 2210 TENNYSON DRIVE - LESLIE SCHLANGER REQUESTS A VARIANCE FROM THE REQUIREMENT THAT UTILITIES TO DETACHED ACCESSORY BUILDINGS BE PROVIDED BY BRANCHING SERVICE FROM THE PRINCIPAL BUILDING. *VIOLATION*: THE APPLICANT IS PROPOSING TO HAVE A SEPARATE ELECTRICAL METER FOR A DETACHED CARPORT. SECTION 30-4-8.5(A), PRESENT ZONING-RS-12, BS-123, CROSS STREET- NEW GARDEN ROAD. (GRANTED)

Mr. Ruska stated that Leslie Schlanger is the owner of the property located at 2210 Tennyson Drive. The lot is located at the northern terminus of Tennyson Drive south of New Garden Road on zoning map block sheet 123. The lot is zoned RS-12. Current tax records and the applicant's survey show the lot contains 5 acres. The lot is unique in shape, due to different lengths and bearings of property lines. The property contains a single family dwelling, a detached in-ground pool, a detached utility building, and a detached carport. The applicant is requesting to be allowed to have a separate electrical meter on the detached carport. Section 30-4-8.5(A) requires: "For buildings or structures accessory to detached single family and two family dwellings, water, sanitary sewer, and/or any other utilities shall be provided by branching service from the principal building." The applicant has submitted a drawing that shows the carport located in front of the house. This is a nonconforming structure, because detached structures are not allowed in front of the front building line of the principal dwelling. The house was built towards the rear portion of the property in 1940. The lot was annexed into the City in 1984. The City has no records indicating when the carport was constructed on the property. The applicant has stated the carport has been there for approximately 25 years, which would place the carport on the property in 1979. The carport is approximately 180 feet from the existing house meter. The applicant's survey shows a power pole approximately 120 feet from the carport. In his application, the applicant has stated he needs the separate meter for power to use his welding equipment, which is his personal hobby. The adjacent properties are also zoned RS-12.

Dr. Leslie Schlanger, the applicant, was affirmed and stated that he had information to present to the Board members for their review. He owns the property and the carport was built around 1979 or 1980 while the property was in Guilford County and it is not in violation because it was grandfathered in. Since he retired from his medical practice, he took up the trade of welding and does it has a hobby and art thing. He does not sell any of his art work. He decorates his property and gives it to friends and relatives who have the desire to own an original art piece by him. His current house has 200 amp service which is common for most dwellings in Greensboro. The welder that he has requires 50 amp service and the minimum he could have to the building, as explained to him by a licensed electrician and Duke Power, would be 100 amp service but they would recommend 200 amp service. The power would have to be run via the house because that is the present code and that is why he is here for a variance. The electrical box is

on the west side of the house as indicated on the drawing he presented and the carport is to the right (east) and the utility pole is further to the east. The drawing shows that

approximately from the current utility pole to the carport would be 120 feet. Duke Power has told him that if they were to run the power to his house first and then to the carport, he would have to run about 300 feet to the existing meter box on the left (west) side of the house and then run back again in the same direction to the carport. They offered him underground service which is more aesthetically preferable but that would have to go under the driveway. The other option would be two utility poles, one right at the carport and the other at the house. He has to satisfy certain conditions to get the variance and he does make reasonable use of the property because he lives there and he thinks that the hardship results from the uniqueness of the circumstances, the size of the lot, the position of the house and the position of the carport. He does not think the hardship is a result of his own actions as these are things that most of them were already there to begin with. It does not make sense to him and to Duke Power, to run the line all the way, 300 feet, and then back approximately 180 feet. He does not intend to run a business there or make an additional residence on the property. He just wants it for use in his welding hobby.

Chairman Sparrow asked if there was anyone present who wished to speak in opposition to the request and no one came forward.

After a short discussion Ms. Lewis stated that in regard to BOA-04-09, 2210 Tennyson Drive, that the Zoning Administrator's facts be incorporated into the record and based on the stated findings of fact, she moved that the Zoning Enforcement Officer be overruled and the variance granted, based on the following: The practical difficulties in carrying out the strict letter of the ordinance is that the distance from the utility pole to the house and then back again is not a practical consideration and the hardship of which the applicant complains results from this unique circumstance of where the structure is located and the hardship that would result from the application of this property goes back to the fact that the building is there and the property was annexed and brought into the city and is not the result of the applicant's own actions because of the annexation and where the utility pole is located. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit because it would allow the applicant to make practical use of that part of his property and the granting of the variance in no way hinders public safety and welfare. The motion was seconded by Mr. Tuck. The Board voted 6-1 in favor of the motion. (Ayes: Sparrow, Cross, Kee, Lewis, Tuck and Holston. Nays: Kauber.)

(B) BOA-04-10: 810 NOTTINGHAM ROAD - WILLIAM BODNER JR., REQUESTS A VARIANCE FROM THE MINIMUM SIDE SETBACK REQUIREMENT. *VIOLATION:* A PROPOSED DETACHED CARPORT WILL ENCROACH 1.6 FEET INTO A REQUIRED 5-FOOT SIDE SETBACK. SECTION 30-4-8.2(B). PRESENT ZONING-RS-12, BS-10, CROSS STREET- DOVER ROAD. (GRANTED)

Mr. Ruska said William and Anne Bodner are the owners of a parcel located at 810 Nottingham Road. The lot is located on the northern side of Nottingham Road south and

east of Dover Road on zoning map block sheet 10. The lot contains a single family dwelling. The applicant is proposing to construct a 20-foot by 20 foot detached carport to the rear of the house. The carport is proposed to be 3.4 feet from the side property line instead of 5 feet as required for a variance of 1.6 feet. The applicant has stated this is the most reasonable location for the carport. The existing dwelling is centered on the lot and the existing concrete driveway is also located on the eastern side of the lot. The applicant has also stated that the remaining portion of the rear yard is heavily landscaped and contains a significant mature tree, which he wishes to retain. The lot is slightly rectangular shaped and has approximately 10,000 square feet in area. The lot is nonconforming in size, because it does not contain 12,000 square feet, which is the minimum requirement for the RS-12 zoning district. The carport is proposed to be built inside the existing retaining walls. The house is constructed in the center of the lot, with more depth towards the rear. The house is 8 to 10 feet closer to the rear property line than the front property line. If the carport was proposed in the side area between the front and rear wall of the house, the deviation would be a much greater variance request. If a detached structure is proposed between the front and rear wall of the principal structure it is required to meet the same setback as the principal structure, which is a minimum of 10 feet. A 20-foot carport, plus a 5-foot minimum separation from the house, plus a 10-foot side setback would require 35 feet minimum width. The applicant only has 25 to 26 feet of side width available on the eastern portion of the lot. If the carport were reduced to 18 feet in width the structure would meet the dimensional requirement. The minimum width on a 90-degree (straight-in) parking space is 8.5 feet minimum with 9 feet recommended. Eighteen feet will theoretically accommodate 2 vehicles; however, the applicant has made mention that due to the existing retaining walls, it would be very difficult to open car doors without risking damage to them. The lot is currently zoned RS-12. The adjacent properties are also zoned RS-12.

Dr. William Bodner, the applicant, was sworn in and stated that he wished to present a survey that was done on the lot and some pictures of the lot and the area. He really did not have anything else to add except that they wish to build a carport to help keep his wife out of the weather. The proposed carport would not fit anywhere else on the property and the proposed location would be the most convenient and it would be consistent with the neighborhood. His next door neighbor would not be impacted as there is a wooden wall between the properties. There is a significant drop in his property making placement even more difficult.

Chairman Sparrow asked if there was anyone present who wished to speak in opposition to the request and no one came forward.

Mr. Kauber stated that in regard to BOA-04-10, 810 Nottingham Road, that the Zoning Administrator's facts be incorporated into the record and based on the stated findings of fact, he moved that the Zoning Enforcement Officer be overruled and the variance

granted, based on the following: There are practical difficulties or unnecessary hardships that result from carrying out the strict letter of this ordinance. If the applicant

complies with the provisions of the ordinance he can make no reasonable use of the property because reasonable use comparable to a flat lot of similar size cannot be made unless the variance is granted due to the topographical features of the lot and the significant slope. The hardship of which the applicant complains results from unique circumstances related to the applicant's property because it is the slope of the lot that limits where the proposed carport can be built. The hardship results from the application of the ordinance to the property because given the available locations for construction it is the setback rules that prohibit the construction. The hardship is not the result of the applicant's own actions because the applicant has no control over the current topography of the property. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit because the construction of a carport to serve an existing residence is consistent with the intended use of property in a residential district. The granting of the variance assures the public safety and welfare and does substantial justice because there appear to be no public safety and welfare issues and the applicant benefits while it appears that no one will be harmed. The motion was seconded by Ms. Lewis. The Board voted 7-0 in favor of the motion. (Ayes: Sparrow, Kauber, Cross, Kee, Lewis, Tuck and Holston. Nays: None.)

SPECIAL EXCEPTION

(A) BOA-04-011; 3722 HIGH POINT ROAD - ALVIS GRAY SPRIGHT REQUESTS A SPECIAL EXCEPTION AS AUTHORIZED BY SECTION 30-5-5.15 TO RETAIN NEW WALL SIGNAGE FOR A NONCONFORMING USE THAT HAS BEEN ERECTED WITHOUT BOARD OF ADJUSTMENT APPROVAL. PRESENT ZONING-HB, BS-74, CROSS STREET- HOLDEN ROAD. (GRANTED)

Mr. Ruska said that Alvis Spright is the current owner of the property located at 3722 High Point Road, which contains Fantasy Superstore. The previous business was Gent's Video and News. The lot is located on the north side of High Point Road west of South Holden Road on zoning map block sheet 74 and is currently zoned HB. The property contains a nonconforming Sexually Oriented Business, an Adult Bookstore or Adult Video Store which is defined in Section 30-2-2.7: "A commercial establishment which as one (1) of is principal business purposes offers for sale or rental, for any form of consideration, any one (1) or more of the following:

a. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other visual representations that depict or describe specified sexual activities and/or specified anatomical areas; or
b. Instruments, devices, or paraphernalia that are designed for use in connection with specified sexual activities."

The business also offers mini-motion picture viewing. The use is nonconforming because it is within 1,000 feet of residentially zoned property. It is approximately 210

feet from residentially zoned property. The applicant is requesting a Special Exception in reference to having changed the wall signage prior to obtaining a Special Exception, as required by Section 30-5-5.15. This Section states: “New signs relating to a properly established nonconforming use may be permitted if such signs comply with the requirements of this Article and a special exception is granted by the Board of Adjustment.”The wall signs were changed on the front and side elevations from Gent’s Video & News to Fantasy Super Store, DVD’S-Novelties-Arcades. A Notice of Violation was issued to Fantasy Super Store at 3722 High Point Road. The violator was instructed to apply for a special exception for the new signage that was recently installed. The property does not have a freestanding sign. The wall signs are in compliance in reference to allowable square footage. The side wall elevation signs are less than 50 square feet per each elevation. The High Point Road elevation sign is 60 square feet which is less than 10 percent of the wall elevation. The sign that faces High Point Road is internally lit. The side elevation signs are not internally illuminated.

Jerry Bailey, business consultant representing the applicant, was sworn in and stated that they wish to change the name on the sign as a new tenant has changed the business. There is no substantive change in the signage other than the change of the name. Everything else basically remains the same.

Counsel Carr stated that when there is a nonconforming use, there is a requirement to get the permission to change the sign prior to doing so. All the signs that were changed are still in conformity with the current sign regulations. It simply requires that a nonconforming use get permission to get a sign change if it is going to happen.

Chairman Sparrow asked if there was anyone present who wished to speak in opposition to the request and no one came forward.

After some discussion Mr. Tuck stated that in regard to BOA-04-11, 3722 High Point Road, that the Zoning Administrator's facts be incorporated into the record and based on the stated findings of fact, he moved that the Zoning Enforcement Officer be overruled and the Special Exception be granted because it meets the purpose and intent of the ordinance and preserves its spirit, assures public safety and welfare and does substantial justice. The motion was seconded by Ms. Lewis. The Board voted 6-1 in favor of the motion. (Ayes: Kauber, Cross, Kee, Lewis, Tuck and Holston. Nays: Sparrow.)

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There being no further business before the Board, the meeting was adjourned at 5:55 p.m.

Respectfully submitted,

Donald Sparrow, Chairman
Greensboro Board of Adjustment

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